

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 91088-001

v

Blue Cross Blue Shield of Michigan
Respondent

/

Issued and entered
this 9th day of September 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On July 21, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on July 28, 2008.

The Petitioner is enrolled for health coverage with Blue Cross Blue Shield of Michigan (BCBSM) through the Michigan Education Special Services Association ("MESSA"). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on July 31, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the MESSA *Choices Group Insurance for School Employees Certificate* (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner has requested authorization for reimbursement for a Preimplantation Genetic Diagnosis (PGD) test with in vitro fertilization. This is a genetic test that is done on an embryo. The Petitioner wants this test before the embryo is implanted because she previously had a child with a disease called spinal muscular atrophy. She would like to prevent the possibility of having another child with this disease. BCBSM denied authorization for this test.

The Petitioner appealed BCBSM's decision. BCBSM held a managerial-level conference on June 12, 2008, and issued a final adverse determination dated June 23, 2008.

III ISSUE

Is BCBSM required to provide coverage for Petitioner's PGD test and in vitro fertilization?

IV ANALYSIS

Petitioner's Argument

The Petitioner's four month old son was diagnosed with the terminal motor neuron disease spinal muscular atrophy. This disease destroys the nerves in the spinal cord necessary for voluntary functions such as head and neck control, crawling, walking and most importantly swallowing and breathing. It is the number one genetic killer of children under the age of two. At this point in time, only palliative care is available; there is no treatment or cure for the disease. The Petitioner's son died of this disease at seven months of age.

The Petitioner has a 25% chance of passing the disease to her children (her husband is also a carrier). The Petitioner and her husband do have a healthy four-year-old son. It is their desire to have another healthy child. If the Petitioner conceives naturally, a test can be conducted at fifteen weeks to determine the presence of the disease. However, the Petitioner is morally opposed to terminating a pregnancy and is unable to take the risk of having another child with this disease.

The other option to conceive a healthy child is to employ the PGD test. This procedure must be done in association with in-vitro fertilization. The Petitioner considers this option to be most responsible and preventative measure she can take to significantly reduce the chances of having a child with spinal muscular atrophy.

While the cost of in-vitro fertilization with the PGD test is expensive, it is much less expensive than caring for a child with spinal muscular atrophy. Therefore, the Petitioner requests that BCBSM be required to authorize and cover the Petitioner's PGD test and in vitro fertilization.

BCBSM's Argument

The certificate sets forth what medical care services are covered. Section X, "Exclusion and Limitation," states in pertinent part:

The following exclusions and limitations apply to the MESSA Choices program. These are in addition to limitations appearing elsewhere in this coverage booklet.

- Artificial insemination (including in vitro fertilization) and related services

BCBSM is aware of the Petitioner's circumstances of not wanting to pass this genetic disease onto another child. However, there are no provisions in the certificate to pay for these type services. Therefore, BCBSM is unable to approve payment for the PGD services the Petitioner has requested.

Commissioner's Review

The Commissioner is very sympathetic to the Petitioner's desire to avoid having another child with spinal muscular atrophy. However, the certificate language is clear; in vitro fertilization and related services, which would include the PGD test, are explicitly excluded. In addition, no state statute requires that these medical services be covered. Therefore, the Commissioner finds that these services are not a covered benefit.

**V
ORDER**

BCBSM's final adverse determination of June 23, 2008 is upheld. BCBSM is not required to provide coverage for the Petitioner's in vitro fertilization and PGD test.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.